

## **REMARKS**

This application has been carefully reviewed in view of the current Office Action in which claims 1-27 were rejected as obvious based upon admitted prior art, and the Srinivasan and Bell references. Applicants respectfully request reconsideration in view of the following:

### **REGARDING THE ADMITTED PRIOR ART**

The Office Action asserts that the Applicants have admitted certain prior art on page one of the application. Applicants, however, wish to point out that although the systems described on page one are known as of the filing of the present application, Applicants have not admitted that such systems are in fact prior art.

### **REGARDING THE OBVIOUSNESS REJECTIONS**

Applicant has disclosed and claimed a system in which a first network presence provides information concerning downloadable digital data as well as physical media for purchase by the consumer. In certain embodiments, the consumer may select the physical media for purchase using the first presence, however, only the transaction for the physical media is actually carried out by the first presence.<sup>1</sup>

Neither the Srinivasan reference nor the Bell reference (nor even the allegedly admitted prior art) teach or suggest a system, method or storage medium that supports access to both downloadable data and physical media using the mechanism wherein the physical medium purchase is fulfilled by a first presence and the downloadable data is fulfilled by the second presence using the mechanism claimed. Note that the claims call for the content to comprise “downloadable digital data and physical storage media.”

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<sup>1</sup>It is noted that the purchase of downloadable data is covered in the claims of co-pending and commonly owned U.S. patent application S/N 09/836,632 filed 4/17/2001. It is further noted that additional aspects of this invention are covered in co-pending application S/N 09/836,631, also filed on 4/17/2001 and awaiting first action. An Information Disclosure Statement is being submitted concurrently herewith listing all known art including that which was cited in the first listed co-pending application. It is respectfully requested that the Examiner consult and coordinate with the Examiners of these co-pending applications to assure that the best art known is brought forth in each case.

The Office Action asserts that "*it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine the two similar sales processes shown above by means of the Bell et al. System in order to increase sales.*" It is respectfully submitted, first of all, that while it may be desirable to increase sales, it is not such a simple and obvious matter as to how to do so. Thus, it is not believed that the cited references provide adequate basis to make the proposed combination. In order to properly combine the references, there must be some teaching or suggestion in the art to make the proposed combination.

Further regarding the Bell reference, it is asserted that the Bell system can be used to combine the two sales process in order to meet the features of Applicants' claims. However, it is noted that the Bell reference does not provide a process which meets certain of Applicants' claim features. The Examiner's attention is directed to Col. 2, line 35 through Col. 3, line 57. The Bell reference teaches that a merchant "loyalty site 30 is actually situated at the merchant loyalty server 12", and that this loyalty site presents an offer to the customer, preferably in the form of a banner ad that appears on an order confirmation page after the customer has entered an order. Thus, if this system were used as proposed in the Office Action, the customer would not have an opportunity to make a purchase of a second type of product (physical media or downloadable data) until confirming purchase of the first type of product. In Applicants' claims, the consumer is presented with both options on a single page by virtue of the purchasable content being of either format. Moreover, Bell requires the customer to opt-in to a special offer before being presented with the second type of product. Additionally, Bell requires use of a loyalty server that is not needed to meet the features of Applicants' claims.

In view of the above, it is believed clear that the cited references neither meet the claim features nor suggest them. Accordingly, reconsideration and allowance is respectfully requested.

The undersigned additionally notes that many other distinctions exist between the cited references and the invention as claimed. However, in view of the clear deficiencies in the art as pointed out above, further discussion of these deficiencies is believed to be unnecessary at this time; failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position.

#### THE CLAIM AMENDMENTS

The claims have been amended by rearrangement of certain of the features in order to assure clarity that the purchasable content comprises both the downloadable data and physical media and that the actual transaction involves certain of this purchasable content. The claims have been further amended to provide actions based upon a decision as to whether the transaction involves physical media by way of clarification. These additional claim features are not believed necessary to distinguish over the cited art as explained above, but provide enhanced clarity of the claims. New claims are also submitted for the Examiner's consideration.

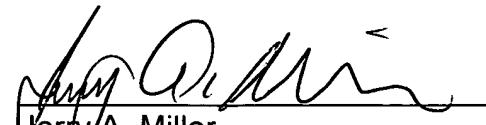
No amendment made herein was related to the statutory requirements of patentability and no amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date.

#### REQUEST FOR INTERVIEW

The undersigned respectfully requests that the Examiner contact him after review of this response for an interview at his convenience prior to issuance of another action, in order to assure that the Applicants' position is fully understood.

Respectfully submitted,



Jerry A. Miller  
Registration No. 30,779

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Please Send Correspondence to:

Jerry A. Miller  
Miller Patent Services  
2500 Dockery Lane  
Raleigh, NC 27606  
Phone: (919) 816-9981  
Fax: (919) 816-9982

**Customer Number 24337**